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IN THE
SUPREME COURT OF THE UNITED STATES

GLORIA SARNO, G.M.F.C., INC.,
GLORIA MARSHALL SALON OF TORRANCE,

Petitioners,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ of Certiorari
To The Second District Court Of Appeal
Of The State Of California

APPENDICES TO PETITION FOR WRIT OF CERTIORARI
(Volume II, App. 46 - 90)

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brought under the Dance Act, California Civil Code section 1812.50 et seq. to recover monies prepaid under contracts for dancing lessons which were not furnished. The Dance Act, regulating contracts for dance studio lessons, is very similar and parallel in construction to Civil Code section 1812.80, regulating contracts for health studio services, several provisions of which the defendants are alleged to have violated in the present complaint.

GMA patrons reasonably believed they were dealing with Gloria Marshall Figure Salons as a business entity. As noted, GMA and GM Torrance engaged in joint advertising using the same Gloria Marshall trademark and toll-free "800" telephone number, and each used patron agreements under the same trademark. When GMA salons closed, patrons were notified they could use salons operated by the other Gloria Marshall entity, yet the notices did not mention that these salons were owned by a separate entity.

Notwithstanding the testimony of the Bergendahls and Gloria Sarno, GMFC is likely to have known of GMA's illegal practices and deceptive advertising. The two entities shared commercial offices and engaged in many "inter-company" business transactions. The same controller and other employees and independent contractors worked for both entities. Since Mark Bergendahl served as both vice president and employee of GMA, as well as president of GMFC, GMFC cannot reasonably argue that it did not "know" of GMA's practices.

Exhibit 258 shows Gloria Sarno as a guarantor of GMA lease (Orange salon). Exhibit 263 shows Mark Bergendahl signing for GMFC as a guarantor of a GMA lease. This lease was for the Laguna Hills salon. Exhibit 255 shows GMA taking over a lease that was previously held by GMFC. This lease pertained to the Lakewood salon.

GMA and GM Torrance engaged in joint advertising. (Exhibit 28, pages 022 - 041). The Torrance and Cerritos salons

were listed along with the salons of GMA. Readers of the advertisements were led to believe that the salons fell under one entity, the "Gloria Marshall Figure Salons." Moreover, prospective patrons were led to believe that Gloria Marshall herself had some connection with the salons through the extensive use of her picture. The name "Gloria Marshall Figure Salons" was used throughout the United Stat4es and Australia.

Additionally, Mark Bergendahl and Gloria Sarno testified as to the use of the 1-800-2 TRIM ME phone number depicted in the advertisements. Calls to this number were directed automatically to the closest salon location. GMA and GM Torrance salons were included in this system.

Redfield Taylor and Associates handled the advertising for the Gloria Marshall salons. No other purpose is known. Of course, there are numerous transactions shown between GMA and Redfield Taylor on the GMA general ledgers, just as there are transactions between GM Torrance and Redfield Taylor in the GM Torrance general ledgers (e.g., Exhibit 344, period 5 fiscal year 94, page 2). What is interesting, however, is the number of transactions between GMFC and Redfield Taylor as shown on the general ledgers of GMFC. Examples of these are shown in Exhibit 356 and are as follows:

Exhibit 356

Page 15	Check Number 4953	$4,000
Page 18	Check Number 5011	$2,800
Page 26	Check Number 5215	$6,000
Page 28	Check Number 5254	$1,700
Page 51	Check Number 5849	$2,000
Page 54	Check Number 5895	$4,000
Page 55	Check Number 5928	$ 800
Page 123	Check Number 7205	$2,000
Page 130	Check Number 7367	$2,000
Page 133	Check Number 7462	$2,000

These transactions occurred when Mark Bergendahl was president of Redfield Taylor and Vice President of GMFC. Yet, when questioned regarding some of these transactions, Mark Bergendahl could not give a sufficient answer.

Jack Perking, who had extensive dealings with the Gloria Marshall Salons, testified that he thought that he was dealing with one large entity being run by Gloria Sarno. His billings were split only between the United States and Australian operations. He never even knew of a Gloria Marshall America or a business known as Gloria Marshall of Torrance. Advertising was discussed between himself, Mark Bergendahl, Patricia Townsend, and Gloria Sarno. These discussions took place at the corporate office and covered advertising for all the salons in Southern California.

Julie Favata worked as a clerical person for "Gloria Marshall Figure Salons" in 1978 at the "corporate office" in Downey. She testified that while she was employed at Gloria Marshall, she met Bob Barkatelly, who was the controller for the "Gloria Marshall Figure Salons." Subsequently, in the early 1980's, Ms. Favata obtained other employment in the health studio industry at either Jenny Craig or Nutrasystem.

In 1989, Sonia, an employee of Gloria Sarno, offered her a job with the Gloria Marshall Figure Salons, It should be noted that Julie Favata did not know, at the beginning of her employment, that she was an employee of Gloria Marshall America. Initially, she was not aware of the existence of separate corporate entities. Later, she found out that she worked for Mark and Kellee Bergendahl's salons (GMA). Eventually, she moved on to work for GM Torrance.

Julie Favata sold memberships at all of the grand openings of Gloria Marshall salons between 1991 and 1994. While employed at GM Torrance she recalls participating in the grand openings of the following GMA salons: West Covina, Puente Hills, Arcadia, West Los Angeles, Glendale, and

Sherman Oaks. When Gloria Sarno opened her Torrance salon in 1990 or 1991, Julie, then a GMA employee, sold memberships at the "grand opening." Grand openings last for approximately three to four weeks. During the Torrance grand opening, her employment status at GMA did not change.

In 1994, when employed as a supervisor at GM Torrance, Mark and Kellee Bergendahl utilized her services to sell memberships in three separate GM Utah salon grand openings. Gloria Sarno did not replace her and Julia Favata maintained phone contact with GM Torrance managers while she worked in Utah. In effect, during her involvement with GM Utah grand openings, Julie Favata was absent from the GM Torrance salon operations for approximately three months.

When recruited to work at the Torrance grand opening, neither Gloria Sarno nor GM Torrance required Julie Favata to learn any new salon procedures. In effect, no training was offered or required. Similarly, GM Utah did not provide Julie Favata with any training for the openings of the three Utah salons. The procedures, forms, and operations of the different corporate salons, in effect, were the same or similar.

Julie Favata also testified to various documents with corporate information on the GMA and GMA Torrance salons. These documents were disseminated to all GMA and GM Torrance managers. Each single document contained figures and transactions for both GMA and GM Torrance salons. For example, Exhibit 199, page 00256, the "Gloria Marshall America Inc. July 1991 Sales Figures", included Torrance and Cerritos sales figures. Page 00256 was admitted, but plaintiff did not include page 00257 because it was not listed as an exhibit. However, Julie Favata testified that the exhibits contained sales figures for GMA and GM Torrance salons.) Again, Exhibit 199, pp. 00645-00646 are GMA March 1991 sales figures that include Cerritos and Torrance.

Exhibit 199, pp. 00530 to 00538 are documents that

tracked detailed daily individual salon transactions or information for a particular month. These exhibits tracked transactions such as refunds, sales, ACH, Gross, Quick Trim sales, leads, advertising, bonus, etc., for each individual salon. Exhibit 199, pp. 00530 to 00538 include Torrance, Cerritos and GMA salons. Each salon was assigned a number. Torrance was 03 and Cerritos was 4. Each GMA salon had it own number. In any event, Julie Favata testified extensively about these documents and she explained the meaning of each transaction description.) Similarly, Exhibit 199, page 00276, is the same document for the Orange/Westminster figures.

According to Julie Favata, weekly reports of salon sales information and weight loss records of patrons were sent to the corporate office every Friday or Monday. These documents were sent by mail to the corporate office, but not directed to any specific person at the corporate headquarters in Seal Beach.

Julie Favata received the following memorandums, each dated April 1, 1991, while employed at either GM Torrance or GMA. Exhibit 199, page 00266, admitted into evidence, is a memorandum written on Gloria Marshall Figure Salons stationary that is addressed to "ALL SALON PERSONNEL". The memorandum states in part: "PLEASE JOIN US IN WELCOMING FLORENCE BROWN TO THE GLORIA MARSHALL TEAM. FLORENCE HAS BEEN NAMED THE LOS ANGELES REGIONAL SUPERVISOR AND WILL BE IN CHARGE OF THE EXISTING L.A. SALONS (CERRITOS, TORRANCE, AND WEST LOS ANGELES) AND WILL CONDUCT THE EXPANSION OF BOTH THE LOS ANGELES AND VALLEY AREAS." The second memorandum, Exhibit 199, page 00267, was admitted into evidence. It is addressed to "ALL SALON PERSONNEL". This document states: "PLEASE JOIN US IN CONGRATULATING NIKKI SAMUELSON IN HER RECENT PROMOTION TO THE POSITION OF SENIOR MANAGER OF THE WESTMINSTER SALON. NIKKI STARTED WITH GLORIA MARSHALL'S AS A COUNSELOR AT THE LAKEWOOD AND TORRANCE SALONS. SINCE

THEN, SHE HAS BEEN A SUCCESSFUL ASSISTANT AT THE ORANGE SALON."

According to Julia Favata, senior management meetings included managers from Torrance, Cerritos, and GMA salons. These meetings took place at the corporate headquarters in Seal Beach. While Julie Favata was a senior manager for GM Torrance, she would have meetings about once a month with Mark and Kellee Bergendahl. Kellee Bergendahl generally ran these meetings. If Kellee Bergendahl was not present, one of her trainers, probably Diane McCay, would be in charge. At these meetings, promotions and sales figures would be discussed. On page 290 of Exhibit 198, Julie Favata states that manager training meetings had both Cerritos and Torrance managers along with Mark and Kellee Bergendahl's managers. They would be all in the same room, and taught by the same instructors. Moreover, in Exhibit 198, on page 388, Julie Favata testified regarding training sessions. She testified that, during these sessions, at no time was there ever a separation of the GM Torrance employees from the GMA employees. After such meetings, there was never a training session for just the GM Torrance employees. Whether Julie Favata worked for GMA or GM Torrance, she always sent employees to the corporate office for training. Counselors and sales people of both GMA and GM Torrance were sent to the corporate office for training.

Julie Favata, and other witnesses, testified as to the Dem policies and Procedures. Dem is a Gloria Marshall Figure Salon term for demonstration. Dems were conducted at both GMA and GM Torrance salons. The sales person showed the prospective patron the exercise machines that included the circulation tables, treadmills, rollers, pulleys, etc. The sales person performed a figure analysis that consisted of actual measurements and the prospective patron's inch and weight loss goals. Additionally, the sales person completed the "Gloria Marshall Guaranteed Slimming Personalized Program" that included patron information, the contract, and the various charts measuring the patrons weight and inch loss progress.

The patron initialed the Visits Completed Chart before being weighed by salon personnel. Subsequently, when a patron obtained her weight or inches goal, the salon personnel prepared a Maintenance Program Weight Schedule (Exhibit 371). Training manuals and forms for counselors and sales personnel were the same or similar at GMA and GM Torrance salons.

Patrons at both GMA and GM Torrance salons were required to purchase a minimum number of sessions regardless of their need to lose weight. In addition, similar reprogramming techniques were employed.

Julie Favata testified that, during her entire experience in either GMA or GM Torrance salons, prospective patrons were told that the normal price was $7.50 for one half hour treatments. Prospective patrons would be offered a "special" or discount. However, none of the Gloria Marshall salons ever charged $7.50 for one-half hour session. Also, both GM and GM Torrance utilized the same "red flags" procedure when a patron gained weight.

"MANAGEMENT AGREEMENTS"

There were two "management agreements," that were discussed, one between GMA and GM Australia and another between GMFC and GM Australia. Under the GM/GM Australia agreement, employees of GMA would supply management consulting to GM Australia. Mark Bergendahl testified that he performed work under this agreement. Under the GMFC/GM Australia agreement, it would be the GMFC employees who would supply the management consulting to GM Australia. Mark Bergendahl testified that he worked under this agreement (Bob Barkatelly also worked under this agreement.).

Bob Barkatelly was an employee of GMFC. (Exhibit 20) While Mark Bergendahl testified that Bob Barkatelly had his

own accounting business, it is clear that Bob Barkatelly was mainly involved in the accounting for the Gloria Marshall entities. He always had a permanent office at the corporate locations and was paid by GMFC (Exhibit 570). Bob Barkatelly was listed as controller in the GMA Training Manual (Exhibit 28, page 094). Bob Barkatelly also made trips to Australia to handle the accounting work for GM Australia. Mark Bergendahl did not know who paid for such trips. Bob Barkatelly performed accounting work for GMA but was never paid by GMA. Bob Barkatelly also had check writing authority for GMA (Exhibits 264 and 265). Mark Bergendahl stated that Bob Barkatelly was waiting for GMA stock. However, it is clear that during the time Bob Barkatelly was performing accounting work for GMA, he was being paid by GMFC.

Patricia Townsend was also listed in Exhibit 20. In addition, she was paid by GMFC as a W-2 employee. (Exhibit 570) It is clear that she performed extensive services for GMA by way of the coordination of advertising. She acted as a contact for Jack Perkins when it came to discussions of advertising. She did receive some income from Redfield Taylor (Exhibit 569), however, by far most of her income came from GMFC. Pat Townsend also made business trips to Australia (Exhibit 192, page 176).

Ann Beasley was listed as a GMFC employee or independent contractor for GMFC (Exhibit 20). Yet, she was shown as being involved in GMA refunds (Exhibit 45). The same is true of Andrea Farina.

Kim Saalfeld performed account work for the Gloria Marshall entities including GMA. Yet she was paid by GMFC (Exhibit 570).

Mark Bergendahl testified that he did not know who paid certain employees identified in Exhibit 373. The shifting of employee duties was common.

Much like GMFC paying the lease expenses for GMA and the other entities, employees of GMFC, who derived most or all of their pay from GMFC, performed significant duties for GMA. This is a common thread; the large financially fit entity, GMFC, covering the under-capitalized entity.

GMFC's Purchase of GMA's Accounts Receivables

During cross-examination, Mark Bergendahl testified that GMA periodically sold accounts receivables (i.e., installment payments due under patron contracts) to GMFC. By this arrangement, GMA received cash to operate and not have to expend time and resources to collect on these payments, while GMFC received the unpaid balances at a discount. According to Mark Bergendahl, these sales of accounts receivables to GMFC were not made pursuant to any written agreement at any time. Gloria Sarno testified that GMFC paid 85% of the face value of these accounts receivables to GMA. She continued to purchase these contracts when GMA was clearly in financial distress with a steadily declining net worth.

David Weiner, a financial expert called by the defense, testified that while the sale of accounts receivables is not an unusual practice between unrelated entities, he would advise a purchaser to exercise caution if the payments for the accounts receivables were for services by the seller which had not yet been performed. As he further elaborated, he would also urge caution if the seller, such as GMA, was in such financial distress that its ability to provide services under the sold contracts was in doubt because if the seller folded, the buyer would be left with worthless "paper". Consequently, Mr. Weiner would advise a purchaser in such circumstances who nonetheless wished to proceed to buy the accounts receivables at a heavily discounted price.

Undercapitalization by GMA

Mark Bergendahl testified that he started GMA with

only $75,000, which came from his family, friends and his own money. His original design was to expand from his one salon location in Lakewood throughout Southern California. He was able to do, however, only with active financial assistance from GMFC and his mother. Both Prof. Stone and Mr. Weiner testified that the net worth of a business is its assets minus liabilities. According to Mr. Weiner, at least from 1991 to 1994, when the last salon closed, GMA experienced a steadily declining net worth.

On August 4, 1993, GMFC loaned $450,000 to GMA which was memorialized by a note (Exhibit 270, p. 15). Part of the collateral was GMA's pledge of its personal property, including its "equipment". The note provided that "...should GMA decide to close any of their retail locations (Salons) or an administrative office, GMFC, Inc. may, at its sole discretion, elect to call upon that portion of their collateral and assume possession and title thereto." As GMA was closing its salons, according to its own general ledgers and Mark Bergendahl, it sold its equipment - the collateral for the loan - to GM Utah, an entity that was also owned by Mark and Kellee Bergendahl. The note, which was prepared by Bob Barkatelly, the controller for GMA, GMFC, and GM Utah, has never been paid. GMFC made no demand to, nor even took any action against, GMA or GM Utah.

FTC ORDER AGAINST INTERNATIONAL SERVICE INDUSTRIES

This order arose from a Federal Trade Commission complaint against ISI, which was co-owned by Alan Bergendahl, Mrs. Sarno's first husband. Mrs. Sarno testified that the trademark of Gloria Marshall had been held by herself and issued to ISI. The FTC order was designed by its broad sweep to apply to as many entities and persons, both existing in 1974 and subsequently thereafter who would be connected to the operation of the Gloria Marshall Figure Salons, including successors and licensees. In 1982, Alan Bergendahl sold the

trademark, assets and good will to Nutrasystem. In 1987, Mrs. Sarno learned that Nutrasystem had abandoned the Gloria Marshall trademark. GMFC instituted legal proceedings and obtained the trademark back. GMFC issued the trademark to GMA. GMA's advertising is similar to some of the representations which are prohibited by the FTC's consent order.

AMENDING THE JUDGMENT

Code of Civil Procedure section 187 provides that "(w)hen jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the court of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most comfortable to the spirit of this Code."

In Dow Jones Co. v. Avenel (1984) 151 Cal.App.3d 144, 149, the Court of Appeal restated the recognized rule that "(a) trial court has the authority to amend a judgment in order to add additional judgment debtors. Code of Civil Procedure section 187 has often served as the basis for such an amendment of judgment, pursuant to the alter ego doctrine." The Dow Jones court devotes the bulk of its opinion to countering the argument presented by the purported alter ego, a corporation and its president and sole shareholder, that due process concerns require that "... the amended judgment follows a `trial on the merits,' whereas here they were added as judgment debtors without having had the opportunity to `litigate factual issues' behind the judgment." Ibid. Dismissing this contention, the Court noted that the attorneys who represented the named defendant also acted as counsel for the alter ego and "controlled the litigation." Id. at 151.

One authority has summarized the case law in this area as follows: "Control of the litigation sufficient to overcome due

process objections may consist of a combination of factors usually including the financing of the litigation, the hiring of attorneys, and control over the course of the litigation. IA Ballantine & Sterline Cal. Corporation Laws (4th ed.), section 299.04, pp. 14-45 - 14-46. Another key factor is whether the action is adequately defended by the named defendants. As the court in NEC Electronics Inc. v. Hurt (1989) 208 Cal.App.3d 772, 778-779 stated, "`[i]f the claim of individual liability is made at some later stage in the action, the judgment can be made individually binding on a person associated with the corporation only if the individual to be charged, personally or through a representative, had control of the litigation and occasion to conduct it with a diligence corresponding to the risk of personal liability that was involved.' (Citation omitted)." Similarly, in Mirabito v. San Francisco Dairy Co. (1935) 8 Cal.App.2d 54, 59, the court sustained an amendment to the judgment upon a showing that the alter ego corporation paid for the attorneys' fees and costs incurred by the named defendants, "the attorneys for one corporation were the attorneys for the other," and such attorneys vigorously asserted the separateness of the two. Moreover, the court reasoned that "[w]here ... the evidence is sufficient to warrant the conclusion that in effect the two corporations are identical; where ... the action was fully and fairly tried with at least the direct financial assistance of the [alter ego]; and where ... nothing appears in the record to show that [the alter ego] could have produced a scintilla of evidence that would have in any way affected the results of the trial, there is no basis for a different rule." Id. at 60.

By contrast in NEC Electronics, Inc., supra, the named defendant allowed the plaintiff to obtain a default judgment against it because it planned to file for bankruptcy. As the court noted, "This situation contrasts with the usual scenario where the interests of the corporate defendant and its alter ego are similar so that the trial strategy of the corporate defendant effectively represents the interests of the alter ego. At 780.

These three key factors – control of the litigation, a vigorous defense, and a similarity of interests between the named defendants and the alter ego – actually overlap each other. Applying them to the present action strongly tips the balance for allowing an amendment of the judgment against the named defendants to include as alter egos: (1) G.M.F.C., Inc., (2) Gloria Marshall Salon of Torrance, (3) Gloria Sarno (a.k.a. Gloria Marshall, Gloria Bergendahl), (4) Redfield Taylor Associates, Inc., (5) Gloria Marshall of Utah, Inc., (6) Gloria Marshall International, Inc., (7) Gloria Marshall Figure Salons of Australis Pty. Ltd., (8) G.M.F.C. (Aust.) Pty. Ltd., and (9) International Health Industries Ohio, Inc.

9. Control of the litigation:

A. Payment of legal fees: Mark Bergendahl testified that he owes over $100,000 in unpaid legal fees to his counsel, Nelson & Nelson, and that to date he has paid $40,000 which he obtained from loans from his family, and what remuneration he has earned since the close of GMA. Defense counsel Nelson & Nelson, and Robert Sainburg, have conducted a vigorous defense, filed numerous motions and other pleadings, and conducted over two dozen depositions. Either the defense is taking an enormous risk or has some reasonable expectation of payment. Mark Bergendahl is presently earning an income from Jacobson Larson, a family business wholly owned by his mother and which, according to Mark Bergendahl, is undercapitalized. Mrs. Sarno in her testimony described Jacobson Larson as a business devoted to providing consulting services to various Gloria Marshall entities including being a party to a management agreement with GM Australia. Throughout the history of GMA, Mark Bergendahl and Kellee Bergendahl combined never drew more than $24,000 a year as President of GMA. Nonetheless, both had a high-expense life style, living in fashionable neighborhoods of Orange County, driving expensive Jaguars and a Range Rover (which they still do), and purchasing a home with a value of over $700,000 while incurring a substantial mortgage. Mark Bergendahl's income

was not insubstantial during 1990-1994 for he received $50,000 - $80,000 annually from his position as Vice President of GMFC. GMFC had also engaged GMA to handle a management agreement with GM Australia. Yet both Mark and Kellee Bergendahl testified that throughout the course of this litigation, they have been essentially destitute. This raises the intriguing question of who will be paying for the services of Nelson & Nelson. Without the tremendous and ongoing support of Gloria Sarno, GM Australia, and GMFC, GMA would not have existed. Similarly, without the ability to continue to receive money from Gloria Marshall enterprises, Mark Bergendahl would not be able to pay off his legal fees. Certainly, at this present time, he is dependent upon his mother's business enterprises for future income.

B. Joint Counsel: Nelson & Nelson have acted as long-time counsel to Gloria Sarno, GMFC, and other Gloria Marshall enterprises. Robert Sainburg, another defense attorney, was identified at trial as a one-time employee/independent contractor of GMFC. During the course of this litigation, Nelson & Nelson vigorously opposed the attempts of plaintiff to obtain discovery from GMFC and GM Torrance, another of Mrs. Sarno's businesses which engaged in joint advertising with GMA on most occasions. This joint advertising forms the basis for many of the allegations in Plaintiff's Second Cause of Action. The efforts by Nelson & Nelson to resist Plaintiff's discovery requests proved unsuccessful with this Court issuing an order to Compel Production of Documents and imposing a $60,000 sanction award. Mrs. Sarno failed to show for her deposition in late 1996, and did so only after being ordered to appear by this Court. She did not retain the services of Shelden Lytton until just before her deposition, and only then when it was clear that plaintiff would inquire into the alter ego status of her businesses.

C. Involvement in the discovery process: Sheldon Lytton attended the deposition of Mark Bergendahl, and made

objections.

D. Involvement at trial: Mr. Lytton sought unsuccessfully to play an active role in the trial during Mrs. Sarno's direct examination for Plaintiff. He has conferred with Scott Frasier.

E. Settlement offers: Mr. Lytton has made settlement offers to Plaintiff's counsel.

F. Interference with a witness Julie Favata was a cooperative witness for Plaintiff during its investigation. She had information both to substantiating the allegations of the complaint, establishing that defendants had a policy of having patrons sign more than $1,000 for services, and most importantly, identifying additional aspects of an alter ego relationship between Mrs. Sarno's businesses and the named defendants. Prior to her deposition, Ms. Favata had filed a workers' compensation claim against Gloria Sarno and Gloria Marshall Torrance. This claim had been set for trial. One month after the first day of Ms. Favata's deposition, but before its resumption, this claim was settled, resulting in a $10,000 award to her. While the timing may have been pure happenstance, the Court can, and does, draw the inference that the settlement was related to her providing Plaintiff with damaging evidence. Ms. Favata was not a cooperative witness at trial, requiring Plaintiff to impeach her testimony on numerous occasions with testimony she rendered during her deposition.

G. Trial strategy: If the testimonies of the Bergendahls and Mrs. Sarno are to be believed, the former never talked to Mrs. Sarno about their business (except for one occasion, when Kellee Bergendahl spoke with Mrs. Sarno about modifying the Menu Planner) in any respect even though Mrs. Sarno and her enterprises supported the operation of GMA. In another attempt at distancing herself from the named defendants, Mrs. Sarno testified that she did not even know

who were the principals of GMA. In light of all of the other evidence establishing that Mrs. Sarno's enterprises, and particularly GMFC, were the alter egos of GMA, this evidence was incredible and unbelievable. Thus, there appeared to be a calculated and concerted effort at trial to cover up the relationships between the alleged alter egos and the named defendants.

H. An active defense: Clearly, the case here, with much of the defendants' efforts being devoted to excluding that evidence which establishes the similarity of the Bergendahls, who operate Gloria Marshall Figure Salons, and Mrs. Sarno, who also operates Gloria Marshall Figure Salons. Unlike the situation, for instance, in Motores De Mexicali v. Superior Court (1958) 541 Cal.2d 172, 196, where the named defendants, having gone into bankruptcy, allowed a default judgment to be entered against it, here the named defendants have fully litigated issues relating to both liability and alter ego.

I. Similarity of Interests: What makes this trial distinguishable from virtually every reported decision on amending judgments to include alter egos is that both counsel were allowed by the court to present evidence at trial on not just liability, but alter ego issues as well. Mrs. Sarno, for instance, was called as a witness by both sides. Had the alter egos been allowed to participate directly, the alter egos could not have produced any evidence that would have affected the outcome of the trial. Certainly, through the person of Mrs. Sarno, as examined by her long-time counsel, she had the opportunity to do so. This procedure went beyond that sanctioned in Dow Jones Co. v. Avenel, supra, 151 Cal.App.3d at 150.

The only remaining question for the Court on whether to allow the proposed amendment to the judgment is whether Plaintiff acted with due diligence to bring in the alter egos as defendants.

See Alexander v. Abbey of the Chines (1980) 104

Cal.App.3d 39, 48-49. Plaintiff had sought throughout the course of its discovery efforts to uncover sufficient evidence to name Mrs. Sarno all failed to show up for their individually scheduled depositions at the end of 1996, plaintiff immediately sought an order from this court to compel their attendance. Those depositions were not held until 1997. Following these depositions, Plaintiff sought unsuccessfully to file with this Court an Amended Complaint. Nothing in the record shows that the defendants have not acted with due diligence.

PERMANENT INJUNCTION

GOOD CAUSE APPEARING, AND IT APPEARING THAT THIS IS AN APPROPRIATE CASE FOR THE ISSUANCE OF A PERMANENT INJUNCTION, IT IS HEREBY ORDERED: That the injunctive provisions of this judgment are applicable to the offering of health studio services including but not limited to instruction, training or assistance in physical culture, body building, exercising, weight reduction, diet control, figure development, or any other such physical skill, or for the use by an individual patron of the facilities of a health studio, gymnasium, figure salon or other such facility used for any of the above purposes, or for membership in any group, club, association, salon or organization formed for any of the above purposes by defendants, and in connection therewith, to the principals, officers, directors, employees, agents, licensees, representatives, successors and assigns of defendants, and to all persons, partnerships, corporations, and other entities, acting for, through or on behalf of, or in concert or participation with defendants who have actual or constructive knowledge of this Judgment, and to the "alter ego" identified herein. Those identified in this paragraph may be referred to collectively hereafter as "defendants and others."

Pursuant to Business and Professions Code sections 17200, 17203, 17500, and 17535, defendants and others are from the date of entry of this judgment, permanently enjoined and restrained from, directly or indirectly, engaging in the following

acts or practices in connection with any matter related to health studio services:

9. Failing to make pro rata refunds, based upon the patron's actual usage of health studio services, if a health studio closes.

10. Providing a contract to a patron for health studio services, with provisions for the relief of payment for services to occur in the event the patron moves further than 25 miles from the health studio, and such patron is unable to transfer the contract to a comparable facility, that requires that patron to submit a computer generated utility bill with her name at the new address or requires her to acquire and submit any other documentation evidencing such move unless defendants prorate the amount of the refunds from the date of her move.

11. Inserting a clause in a health studio services contract with a provision for the relief of payment for services, to occur in the event that a patron moves further than 25 miles from the health studio, and such patron is unable to transfer the contract to a comparable facility, that such person may be charged a predetermined fee, unless defendants further disclose that the fee may not exceed one hundred dollars $100), or, if more than half the life of the contract has expired, such person may be charged a predetermined fee not exceeding fifty dollars ($50), in violation of Civil Code section 1812.89(b)(2).

12. Provide contracts to patrons for health studio services that:

A. Offer for sale the Gloria Marshall Quick

Trim Menu Plan, Strategy Planner, Quick Trim Meal Replacement, or any related or similar products and make said products non-refundable, in violation of Civil Code section 1812.85(b)(4), 1812.89(a)(1), 1812.89(a)(2), and 1812.89(b)(1). Defendants shall have no obligation to issue a refund for the Quick Trim Meal Replacement if the packaging has been open, torn or damaged, or otherwise shows any sign of tampering or adulteration. Defendants may not deduct from any refund a purported cost for the Gloria Marshall Quick Trim Menu Plan, Strategy Planner, or any other related or similar products for which a patron has not paid any money under he contract.

B. Require patrons to pay a surcharge for using a credit card in lieu of payment by cash, check, or similar means, in violation of Civil Code section 1748.1(a).

C. Impose a twenty-five dollar ($25) administrative fee, in violation of Civil Code sections 1812.85(b)(1) and 1812.85(b)(4), if a patron exercises her three-day right to rescind or cancel the contract.

D. Require a patron to include a copy of her contract along with a notice of cancellation, in violation of Civil Code sections 1812.85(b)(1).

E. Include a definition of disability other than the definition set forth in Civil Code section 1812.89(a)(3), or create any

procedure or formula for calculation of refunds, in violation of Civil Code section 1812.89(a)(2), that obligates a patron who has a physical or mental impairment that prevents her from using the services to pay for the missed services, or denies a refund to a patron for that period of time that she was physically or mentally impaired.

F. Impose a twenty-five ($25) administrative fee on refunds to those patrons or their estates who are unable to use the health studio services because of death or disability, in violation of Civil Code section 1812.89(a)(2).

5. Subtracting any amount from a refund unless specifically permitted to do so pursuant to Civil Code section 182.80 et seq.

6. Selling any pre-packaged food, drink, meal replacement or any other food, drink, or dietary supplement unless the patron is informed in her contract that she is not required to purchase the food or drink or dietary supplement.

7. Advertising or otherwise representing the price of a session for health studio services in any manner other than stating the price of a one-hour session.

8. Offering a contract for health studio services that obligates a person to pay one thousand dollars ($1,000), exclusive of interest and finance charges. For purposes of this paragraph, all contracts for health studio services, which may be in effect between defendants and the same buyer, the terms of which overlap for any period, shall be considered as one contract.

9. Making any oral, visual or written representation, in connection with the offering of health studio services, that states or implies that patrons will lose, or lose up to, a specific number of inches or pounds, unless defendants maintain a comprehensive survey that substantiates the weight or inches reduction representations.

10. Making any oral, visual, or written representation, in connection with the offering of health studio services, that states or implies that a particular patron or patron lost specific numbers of inches or pounds unless defendants and other disclose clearly and conspicuously that the weight or inches lost by said patron or patrons is not what consumers should expect to experience.

11. Making any oral, visual, or written representation, in connection with the offering of health studio services, that states or implies that results are guaranteed unless defendants and others disclose clearly, adequately, and accurately in immediate conjunction therewith:

A. The nature and extent of the guarantee;

B. The conditions and limitations on the guarantee;

C. Which programs are guarantees;

D. The duration of the guarantee

E. The manner in which defendants will perform

12. Selling the Quick Trim Meal Replacement or any related or similar product, if defendants and other make any oral, visual, or written representations, in connection with the offering of health studio services, that there are no pre-packaged foods or no pre-packaged foods offered or required for a

patron's participation in the health studio's weight reduction services.

13. Requiring payment for a minimum or specific number of sessions for health studio services unless the sessions offered represent the total sessions necessary for a patron to achieve her goal weight.

CIVIL PENALTIES

With respect to allegations in the First Cause of Action which have been sustained by this court, Business and Professions Code section 17206 provides "(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) ..." section 17206(b) states, "The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth." With respect to allegations of deceptive or untrue representations in the Second Cause of Action which have been sustained by this court, Business and Professions Code section 17536(a) and (b) mirrors the language of section 17206.

A court must assess civil penalties when it finds that acts of unfair competition have been committed. The burden is on the defendant to establish any financial inability to pay requested civil penalties. People v. Toomey (1984) 157 Cal.App.3d 1, 25.

Civil penalties for violations of sections 17500 are treated somewhat differently, since sections 17536 and 17206

specifically allow for cumulative remedies indicating a legislative intent to allow double penalties. People v. Toomey, supra, at 25. Thus, a violation of section 17500 is also a violation of section 17200, as was pleaded by plaintiff in its complaint; the civil penalty for each violation sustained is $5,000. "What constitutes a single violation of section 17500 (false advertising) for the purpose of imposing a civil penalty under section 17536 depends on the type of violation involved, the number of victims and the repetition of the conduct constituting the violation in brief, the circumstances of the case ..." One civil penalty is imposed for each person solicited to whom misrepresentations were made. People v. Witzerman, Ibid., People v. Superior Court (Jayhill) (1973) 9 Cal.3d 283, 288.

By any calculation, the amount of civil penalties which can be imposed in this matter would be astronomical, since it would include all of the unlawful contract provisions and the number of contracts which contained those provisions (Exhibits 90-183), all instances of failure to make proper refunds, as well as the readership of the various newspapers that carried defendants' advertisements. Accordingly, the Court orders payment of civil penalties on a joint and severable basis in the amount of $200,000.

RESTITUTION

Business and Professions Code sections 17203 and 17535 authorize a court "... to make such orders or judgments ... which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice [in these chapters] declared to be unlawful."

The court orders that defendants set up a restitution fund in the amount of $200,000 from which defendants shall make payment to the following:

1. All persons entitled to refunds as the result of

salon closures who had received a partial refund based upon pro rata use. Such refunds shall be based upon actual usage.

2. All persons entitled to refunds as the result of salon closures who have not received any payment from defendants. Such refunds shall be based upon actual usage.

3. Beatrice Baca, in the amount of $480.00.

4. Patricia Haro, in the amount of $400.00

One hundred twenty (120) days following this Order of the Court, defendants shall present to the court a list setting forth the names of persons to whom refunds have been made, and the amounts of refund made to each. Thereafter, upon further order of this court, any remaining moneys remaining in the restitution funds shall revert to the defendants.

Dated: Oct 30 1997

/s/
REGINALD A. DUNN
Judge of the Superior Court

CONSTITUTIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of

any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. (italics added)

CALIFORNIA CODE OF CIVIL PROCEDURE § 187. JURISDICTION; MEANS TO CARRY INTO EFFECT; MODE OF PROCEEDING:

When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

West's Ann. Cal. C.C.P. § 187

FEDERAL QUESTIONS RAISED

Original Complaint filed with the Superior Court of California for the County of Los Angeles, December 21, 1998, Case No. BC202691:

> "13. Plaintiffs were never named prior to the entry of the judgment itself, were denied their request to have a legal representative defend their interests, were denied their requests to be present during the trial, were never served with a summons, were never given an opportunity to be heard in connection with their being named in the judgment as a purported alter ego of the named defendants, were never notified of any proceeding to add plaintiffs to the Judgment ostensibly pursuant to Code of Civil Procedure Section 187, *were denied extremely basic and fundamental procedural and substantive due process rights guaranteed under the United States* and California Constitutions...and the subject judgment entered under these conditions is void, unenforceable and subject to be set aside upon requests of the defendants (sic) based upon established principles of equity." (italics added)

Opposition to Demurrer of Defendant People of the State of California to First Amended Complaint filed with the Superior Court of California for the County of Los Angeles, January 20, 1999, Case No. BC202691:

> "Discussion of Authorities I. UNITED STATES AND CALIFORNIA CONSTITUTIONS BOTH REQUIRE JURISDICTION, DUE PROCESS, FUNDAMENTAL FAIRNESS, NOTICE AND OPPORTUNITY TO BE HEARD (uppercase and underscoring in original)
>
> "`...nor shall any state deprive any person of life, liberty or property, without due process of law...' United States Constitution, Amendment XIV, Section 1

"...

"`Engrained in our concept of due process is the requirement of notice.' Lambert v. California (1958) 355 U.S. 225, 78 S.Ct. 240, 243, 2 L.Ed.2d 228, 231

"...

"These [Fourteenth Amendment] prohibitions extend to all acts of the state, whether through its legislative, its executive, or its judicial authorities.' Scott v. McNeal (1894) 154 U.S. 34, 45, 14 S.Ct. 1108, 1112, 38 L.Ed. 896, 901

"`No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.' id. at 46"

Appellants' Opening Brief filed with the Second District Court of Appeal of the State of California, November 9, 1999, Case No. B130037:

"Introduction. The United States Constitution states, "...nor shall any state deprive any person of life, liberty or property, without Due Process of law...." (U.S. Const. Amdmt XIV, §1) A judgment that violates this fundamental principle of constitutional law is void and may be collaterally attacked anytime." (p.1)"

"In all 1405 pages of the Joint Appendix and the 3 pages of the Reporter's Transcript, and most importantly, from the allegations of the First Amended Complaint against which People's Demurrer was sustained without leave to amend..., at no time was Sarno ever named in the lawsuit, added as a party to the lawsuit by amended complaint, motion, or post-judgment motion to add a defendant pursuant to Code of Civil Procedure §187, served with a summons, served with an Order to Show Cause why Sarno should not be added,

served with a notice of hearing on a motion to add Sarno, provided an opportunity to be heard, whether it be in the form of a trial, hearing, or by declaration, provided an opportunity to cross-examine witnesses, confront witnesses, or meet any evidence presented, be present during the trial involving People and the original defendants, have their attorney present during the trial, or, in any other way, receive notice and any meaningful opportunity to be heard. There was not even an ex-parte application to add Sarno....No notice. No opportunity to be heard. No due process. Just added at the end of the trial. ¶ People have taken C.C.P. §187 to the next step, beyond the protections of the Due Process Clause, and claim that proposed additional debtors may be added without any notice or opportunity to be heard (because after all, People argue, if the Judge determines pursuant to that statute that the judgment debtor to be added was `one and the same' as the original defendants, then the judgment debtor obviously already had its trial! This is blatantly unconstitutional." (pps. 23-4)

"Every single case that is reported demonstrates that the engine of the United States Constitution does not stop when the motor of C.C.P. §187 is turned on." (p. 30)

Appellants' Reply Brief filed with the Second District Court of Appeal of the State of California, April 11, 2000, Case No. B130037:

"Discussion of Authorities. I. Appellants' Constitutional Rights are Not Dependent on the Evidence Produced or Not Produced in the Original Action.....The right to be heard does not require an advance showing that one will prevail at the hearing, and the particular would be outcome of the denied hearing is irrelevant...Coe v. Armour Fertilizer Works (1915) 237 U.S. 413...." (p.1-2)

Petition for Rehearing and Request for Publication filed in the Second District Court of Appeal for the State of California, May 24, 2000, Case No. B130037:

"Discussion of Authorities I. The United States Supreme Court's Decision in Nelson v. Adams Governs and Requires Reversal Two days prior to oral argument, a unanimous United States Supreme Court decided the case of Donald E. Nelson v. Adams USA, Inc. (April 25, 2000) 2000 Daily Journal D.A.R. 4225. This case is controlling. Further, this case, to the extent that reversal was not already mandated based upon the points and authorities in Appellants' Opening and Reply Briefs, mandates a reversal of the trial court's dismissal of Appellants' complaint. ¶ In Nelson...." (p.1-2)

Petition for Review filed in the Supreme Court of the State of California, June 19, 2000, Case No. S089232:

"Issues Presented 1. Whether the holding of - or, the Court of Appeal's interpretation of - Mirabito v. San Francisco Dairy Co. (1935) 8 Cal.App.2d 54 is consistent with the holding of Donald E. Nelson v. Adams USA, Inc. (April 25, 2000)...which requires persons be afforded the opportunity to contest liability to another. 2. Whether applying California's Code of Civil Procedure §187 to allow the entry of judgment against persons never named as parties, served with a summons, complaint or motion, or given any opportunity by declaration, hearing or otherwise, to present evidence and argument in their defense is consistent with the United States and California Constitutions and the holding of Donald E. Nelson v. Adams USA, Inc. (April 25, 2000) 2000 Daily Journal D.A.R. 4225, (No. 99-502), 2000 WL 459282 (United States Supreme Court)." (p.2)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

GLORIA SARNO a/k/a Gloria Marshall, a/k/a Gloria Bergendahl, an individual; G.M.F.C., a California corporation; GLORIA MARSHALL SALON OF TORRANCE, a California general partnership; GLORIA MARSHALL FIGURE SALONS OF AUSTRALIA PTY. LTD., an Australian corporation; and G.M.F.C. (Aust.) PTY. LTD., an Australian Corporation, Plaintiffs, v. STATE OF CALIFORNIA, a public entity; COUNTY OF LOS ANGELES, a public entity;	CASE NO. BC 202 691 Assigned to: Hon. Richard Kalustian Department 17 FIRST AMENDED COMPLAINT IN EQUITY TO SET ASIDE JUDGMENT, AND FOR DECLARATORY AND INJUNCTIVE RELIEF Action filed: Original pleading Trial date: Not set

PEOPLE OF THE STATE OF CALIFORNIA; LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; and DOES 1 through 5, inclusive,

Defendants

Plaintiffs allege as follows:

FIRST CAUSE OF ACTION
(In Equity to Set Aside Judgment)

By all Plaintiffs against Defendants STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, PEOPLE OF STATE OF CALIFORNIA AND DOES 1 through 5, inclusive

1. Plaintiff GLORIA SARNO is, and at all times relevant mentioned herein was, an individual residing in the County of Los Angeles, State of California. At various times in the past, said plaintiff has also been known as "Gloria Marshall," (her maiden name) and "Gloria Bergendahl" (the name of her late husband).

2. Plaintiff G.M.F.C., Inc. is, and at all relevant times mentioned herein was, a corporation formed, organized and exiting under the laws of the State of California.

3. Plaintiff GLORIA MARSHALL SALON OF TORRANCE was at all relevant times a California general partnership.

4. Plaintiff GLORIA MARSHALL FIGURE SALONS OF AUSTRALIA, PTY. LTD. is, and at all relevant times was, an Australian Corporation, organized, existing

and operating under the laws of the country of Australia.

5. Plaintiff G.M.F.C. (Aust.) Pty. Ltd. is, and at all relevant times was, an Australian Corporation, organized, existing and operating under the laws of the country of Australia.

6. Defendant STATE OF CALIFORNIA is, and at all relevant times as, a public entity, and at all relevant times appeared by and through its legal representatives, California Attorney General's Office.

6a. Defendant COUNTY OF LOS ANGELES is, and at all relevant times, was, a public entity, and at all relevant times appeared by and through its legal representatives, Los Angeles County District Attorney's Office.

6b. Defendant PEOPLE OF THE STATE OF CALIFORNIA is, and at all relevant times as, a body of public.

6c. Defendant LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, is, and at all relevant times was, a public entity and is the levying officer for the County of Los Angeles.

7. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 5, inclusive, and therefore sues these Defendants as such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible for the occurrences herein alleged, and the damages are proximately caused by their conduct.

8. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned each of the

defendants was acting as an individual and/or as the agent and/or employee of the remaining defendants and, in doing the things herein alleged, was acting within the course and scope of their authority as agent and employee and with the permission and consent of the remaining defendants.

9. On or about February 14, 1995, Defendants, in the name of "People of the State of California" (hereinafter simply referred to as "Plaintiff in Original Action") through its legal representatives commenced a lawsuit against the following defendants:

1. Gloria Marshall America, Inc.
2. FBS, Inc.
3. Mark Bergendahl
4. Kellee Bergendahl
5. Does 1 through 20, inclusive.

That lawsuit was given case number BC 162313 and was filed in the Central District of the Superior Court of California for the County of Los Angeles (hereinafter simply referred to as "Original Action").

10. On or about March 6, 1997, with the trial scheduled to commence April 7, 1997, Plaintiff in Original Action filed a Motion for leave to file a Second Amended Complaint for the purposes of adding as new defendants in the Original Action the plaintiffs herein and for the purpose of setting forth allegations necessary to pierce the corporate veil of Defendant F.B.S., Inc. This motion was denied.

11. Plaintiffs herein appeared with their attorney, Sheldon H. Lytton, of Kelly & Lytton to protect Plaintiffs' legal interests arising out of the Original Action during the trial of the Original Action. The Superior Court denied Plaintiffs herein the right to

have an attorney participate at the trial because they were not named defendants. The Superior Court also excluded these plaintiffs herein from being present in the Courtroom at anytime during the trial except for when the parties of the Original Action subpoenaed their testimony.

12. At the conclusion of the trial, the Court entered a judgment in favor of Plaintiff of the Original Action and against the defendants of the original action and the plaintiffs herein for monetary damages in the sum of $200,000, restitution to consumers in the sum of $200,000, and a permanent injunction.

13. Plaintiffs were never named prior to the entry of the judgment itself, were denied their request to have a legal representative defend their interests, were denied their requests to be present during the trial, were never served with a summons, were never given an opportunity to be heard in connection with their being named in the judgment as a purported alter ego of the named defendants, were never notified of any proceeding to add plaintiffs to the Judgment ostensibly pursuant to Code of Civil Procedure Section 187, were denied extremely basic and fundamental procedural and substantive due process rights guaranteed under the United States and California Constitutions, as well as California statutory and case law, and the subject judgment entered under these conditions is void, unenforceable and subject to be set aside upon request of the defendants based upon established principles of equity.

14. Plaintiffs have been subject to aggressive collection maneuvers by Defendants and has been deprived of property in an amount according to proof at the time of trial. Plaintiffs are entitled to restitution of all

amounts collected pursuant to this judgment, interest at the legal rate thereon, and such further relief as proved at the time of trial hereon.

SECOND CAUSE OF ACTION
(Declaratory Relief)

By all Plaintiffs against Defendants STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, PEOPLE OF STATE OF CALIFORNIA, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT and DOES 1 through 5, inclusive

15. Plaintiffs incorporate and reallege all preceding paragraphs of this Complaint as though they had been fully set forth below.

16. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends as follows:

A. The Judgment entered in the Original Action is void for lack of jurisdiction, unenforceable and subject to being set aside at any time.

B. The auction currently scheduled for January 14, 1999 of the 1981 boat owned by Plaintiff GLORIA SARNO, is unlawful and without jurisdiction to proceed.

17. Defendants claim that the Judgment entered in the Original Action is not void, is unenforceable and is not subject to be set aside and that the auction is lawful and with jurisdiction to proceed.

18. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as to whether the Judgment entered in the Original Action is void and unenforceable.

19. A judicial determination is necessary and appropriate at this time under the circumstances in order that Plaintiffs may ascertain their rights and duties under the Judgment, if any. Plaintiffs are being subjected to aggressive collection maneuvers by Defendants including an immediate threat of auctioning Plaintiff GLORIA SARNO'S yacht and attempting to compel Plaintiff GLORIA SARNO to pay over $80,000 currently being held in an attorney-client trust account as restitution pursuant to the Judgment to members of the public.

THIRD CAUSE OF ACTION
(Declaratory Relief)

By all Plaintiffs against Defendants STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, PEOPLE OF STATE OF CALIFORNIA, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT and DOES 1 through 5, inclusive

20. Plaintiffs incorporate and reallege all preceding paragraphs of this Complaint as though they had been fully set forth below.

21. Pursuant to the Judgment in the Original Action, said defendants caused the Los Angeles County Sheriff's Department to levy on Plaintiff GLORIA SARNO's 1981 yacht, 56 feet 9 inches, gross tons 68 tons, plus all inventory. The Sheriff seized said yacht and gave notice of an execution sale. This sale was subsequently continued after Eldorado Bank duly fled a verified third party claim with the Sheriff due to a duly recorded lien it held against the yacht in a sum of about $175,000. Thereafter, by stipulation between Defendants and the third party claimant, the sale was continued to January 14, 1999 with a minimum bid of $198,000. The yacht has an apx. fair market value of between $175,000 and $225,000 at this time and has been in the family of GLORIA SARNO for about eighteen years.

22. In several occasions, forums, and communications, Plaintiffs have sought Defendants to case or suspend their

threatened conduct yet Defendants have refused and have persisted with their aggressive collection efforts and still refuse to refrain from their threatened conduct.

23. Permanent and provisional injunctive relief is in order because in the absence of this restraint, the sale of the yacht will cause great and irreparable harm by Plaintiff GLORIA SARNO and her family, the judgment in this case will be rendered wholly or mostly ineffectual, that pecuniary compensation would not afford adequate relief and it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief, and the restraint is necessary to prevent a multiplicity of judicial proceedings.

WHEREFORE, Plaintiff prays Judgment as follows:

A. That the "Amended Judgment" be vacated, set aside, and declared void for lack of jurisdiction.
B. Restitution according to proof.
C. Pre-judgment Interest according to proof.
D. For a declaration that the Judgment is void and unenforceable.
E. For a permanent injunction enjoining Defendants from enforcing the Judgment of the Original Action.
F. For costs of suit incurred herein.
G. For such other and further relief as the Court deems just, proper and fair in order to accomplish substantive justice.

Dated: 1/11/99

LAW OFFICES OF
RICHARD E. ELDRED

By: _____
Richard E. Eldred

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People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. BC 121888
	)	
	)	NOTICE OF ENTRY OF JUDGMENT
Plaintiff,	)	[CCP § 664.5(a)]
	)	
v.	)	Hon Reginald A. Dunn
	)	
GLORIA MARSHALL AMERICA, INC.; FBS, INC.; MARK BERGENDAHL;	)	Dept.: 44

KELLEE BERGENDAHL,)
)
Defendants.)

TO: DEFENDANTS GLORIA MARSHALL AMERICA, INC., MARK BERGENDAHL, KELLEE BERGENDAHL, AND THEIR COUNSEL OF RECORD, E. SCOTT FRASER, AND TO GLORIA SARNO (AKA GLORIA MARSHALL, GLORIA BERGENDAHL), G.M.F.C., INC., GLORIA MARSHALL SALON OF TORRANCE, REDFIELD TAYLOR & ASSOCIATES, INC., GLORIA MARSHALL OF UTAH, INC., GLORIA MARSHALL INTERNATIONAL, INC., GLORIA MARSHALL FIGURE SALONS OF AUSTRALIA PTY. LTD., G.M.F.C. (AUST.) PTY. LTD., AND INTERNATIONAL HEALTH INDUSTRIES OHIO, INC.:

NOTICE IS HERBY GIVEN that on February 24, 1998, judgment was entered in the above-entitled action in favor of plaintiff, the People of the State of California, and against defendants Gloria Marshall America, Inc., Mark Bergendahl, and Kellee Bergendahl, and Gloria Sarno (aka Gloria Marshall, Gloria Bergendahl), G.M.F.C., Inc., Gloria Marshall Salon of Torrance, Redfield Taylor & Associates, Inc., Gloria Marshall of Utah, Inc., Gloria Marshall International, Inc., Gloria Marshall Figure Salons of Australia Pty. Ltd., G.M.F.C. (Aust.) Pty. Ltd., and International Health Industries Ohio, Inc.

Dated: March 3, 1998

DANIEL E. LUNGREN, Attorney General
of the State of California
HERSCHEL T. ELKINS,
Senior Assistant Attorney General
JERRY SMILOWITZ,
Deputy Attorney General
By: /s/
JERRY SMILOWITZ

Attorneys for Plaintiff
People of the State of California

DECLARATION OF SERVICE BY MAIL

PEOPLE OF THE STATE OF CALIFORNIA v. GLORIA MARSHALL AMERICA, INC.;
FBS, INC.; MARK BERGENDAHL; and KELLEE BERGENDAHL.

Los Angeles County Superior Court No. BC 121888

I declare as follows:

I am over the age of 18 years and not a party to the within action. My business address is 300 South Spring Street, Suite 5000-North, Los Angeles, California 90013-1204, in the County of Los Angeles.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal service that same day in the ordinary course of business.

On March 3, 1998, at my place of business, at Los Angeles, California, a true coy of the attached

NOTICE OF ENTRY OF JUDGMENT
[CCP § 664.5(a)]

was placed for collection in the United States Postal Service at the Office of the Attorney General, 300 South Spring Street, Suite 5000-North, Los Angeles, California 90013-1204, in a sealed envelope, postage fully prepaid, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the

State of California that the foregoing is true and correct, and that this declaration was executed at Los Angeles, California, on March 3, 1998.

Delphine Maxwell

JS:dm
00002-450-LA1997N0710

SERVICE LIST ATTACHMENT

PEOPLE OF THE STATE OF CALIFORNIA v. GLORIA MARSHALL AMERICA, INC.; FBS, INC.; MARK BERGENDAHL; and KELLEE BERGENDAHL.

Los Angeles County Superior Court No. BC 121888

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3505 Cadillac Avenue, #0-208
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Gloria Marshall Salons of Torrance
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Gloria Marshall Salons of Torrance
3505 Cadillac Avenue, #0-208
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Redfield Taylor & Associates, Inc.
7755 Center Avenue, Suite 600
Huntington Beach, CA 92647

Redfield Taylor & Associates, Inc.
3505 Cadillac Avenue, #0-208
Costa Mesa, CA 92626

Gloria Marshall of Utah, Inc.
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